THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

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WRIT PETITION NO: 4188 of 1996

THURSDAY, THE TWELFTH DAY OF SEPTEMBER
TWO THOUSAND AND FIVE

Between:

Edla Suryanarayana

.. petitioner

and

The District Collector,

East Godavari and others. .. respondents.

THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO.4188 OF 1996

ORDER:

The case of the petitioner is that he is the cultivating tenant of Ac.2.18 cents in R.S.No.194/1 and Ac.2.18 cents in R.S.No.195/1 of Erupally village belonging to the third respondent chowltry from the long time and that his father also was a tenant in respect of the said lands and that respondents 1 and 2 without following the guidelines issued in G.O.Ms.No.456 Endowments dated 29.9.1995 relating to acquisition of lands belonging to the charitable and endowments institutions, published a notification under Section 4 of the Land Acquisition Act (for short 'the Act') for acquiring the land in his possession for the purpose of providing house sites to the lower strata of the society, dispensing with the enquiry under Section 5A of the Act only with a view to deprive him of his legitimate right to continue as a tenant and acquisition proceedings are liable to be quashed.

On behalf of respondents 1 and 2, second respondent filed his counter affidavit inter alia contending that the land belonging to the third respondent was proposed to be acquired for providing house sites to weaker sections of the society, after following the guidelines issued by the Government for acquisition of endowment lands, and since petitioner is neither a small farmer nor the tenant of the third respondent which owns a large extent of land, and since the said land is most suitable for being used as house site. The draft notification under Section 4 of the Act was published on 21.2.1996 and the draft declaration under Section 6 of the Act was published on 23.2.1996 in the East Godavari District Gazette and for safeguarding the interest of the poor and needy people, enquiry under Section 5A of the Act was dispensed with. Since petitioner filed W.P.No.2624 of 1996, for similar relief, this petition is not maintainable.

No Counter affidavit is filed on behalf of the third respondent.

The contention of the learned counsel for the petitioner is that since the petitioner is a tenant, of the third respondent whose lands are proposed to be acquired, without following either the procedure prescribed under the Act or the guidelines issued by the Government for acquiring the lands belonging to the endowments and since there is no real urgency for dispensing with the enquiry under Section 5A of the Act, the proceedings for acquisition of the land in possession of the petitioner are liable to be quashed.

The contention of the learned Assistant Government Pleader is that since the land proposed to be acquired is most suitable for providing house sites to the weaker sections of the society and since the third respondent choultry has a vast extent of land in that area, and since no other suitable land which can be made use of house sites is available, lands of third respondent proposed for acquisition and since the petitioner is not a small farmer, and since all the formalities and the procedure prescribed for acquisition of land are complied with, and since the enquiry under Section 5A of the Act is dispensed with due to the real urgency, petitioner is not entitled to any relief.

On my direction the learned Assistant Government Pleader produced the relevant file. From that file it is seen that the Commissioner of Endowments through his letter in R.C.No.M1-49105/98 dated 9.11.1998, made a request to the Collector to drop the

proceedings in respect of Ac.4.36 cents in Survey Nos.194/1 and 195/1 of Erupally village of Ramchandrapuram mandal belonging to the third respondent but the Collector informed the Commissioner of Endowments that it is not desirable to drop the proceedings of acquisition keeping in view the public interest. From the above letter, it is, prima facie, clear that proposals for acquisition were initiated even without the consent or reference to the Commissioner of Endowments and that in fact the Commissioner of Endowments is not in favour of the proposed acquisition. The file also contains a letter dated 9.3.1996 addressed by the Managing Trustee of the third respondent choultry to the second respondent informing him that petitioner is the tenant in respect of land proposed to be acquired and since he committed default in payment of rent A.T.C.No.23/81 was filed seeking his eviction in which an order of eviction was passed on 28.6.1983, and that the petitioner preferred an appeal A.T.A. No.89/83 to the District Court against the order of the Tribunal and that the same was dismissed on 15.9.1987 and so petitioner filed W.P.No.482 of 1988 and obtained stay of further proceedings and so the petitioner is not entitled to any compensation, because his tenancy was terminated by Court.

Since petitioner is the tenant of the third respondent in respect of the land proposed to be acquired, and is not yet evicted, prima facie has a right to question the proposed acquisition.

The main contention of the petitioner relates to the validity of dispensation of the enquiry under Section 5A of the Act. First respondent, who has to explain the reasons for his coming to the conclusion that holding an enquiry under Section 5A of the Act would defeat the need for acquisition and that immediate possession of the land should be taken, did not think fit to file his counter affidavit stating the reasons for dispensing with the enquiry under Section 5A of the Act. Since the Land Acquisition Officer is not the authority to dispense with the enquiry under Section 5A of the Act his counter affidavit is of no help in deciding the question relating to the validity or the reasons for dispensing with the enquiry under Section 5A of the Act.

The file produced by the learned Assistant Government Pleader shows that the Mandal Revenue Officer after receiving a representation from the people belonging to the weaker sections of society for providing house sites addressed a letter to the Revenue Divisional Officer to acquire the land in question, by dispensing with the enquiry under Section 5A of the Act enclosing copies of the draft declaration and draft notification to be published. Thereafter, the Revenue Divisional

Officer addressed a letter to the Collector proposing to acquire the land by dispensing with the enquiry under Section 5A of the Act with the proformae of the notification under Section 4(1) and Section 6 of the Act. The file shows that the Joint Collector counter signed the said notification and the Collector mechanically approved the same. The words 'Counter sign' and 'Approval' are not in the hand writing of the Joint Collector and Collector respectively, but they just affixed their signatures below the notings made by the office. There are pencil notings next to the words 'Counter Sing' and 'Approved' like 1/20 etc. So it is clear that the initials, or signatures, of the Joint Collector and Collector were obtained on 20 similar sheets on that day, because pencil noting 1/20 etc., means that the concerned officer would have to affix his signatures to 20 sheets, and that the sheet contain 1/20 is the first sheet out of 20 sheets to be signed by the officer. Noting 2/20 signifies its being the second sheet of 20 sheets to be signed. There is nothing on record to show that the Collector independently applied his mind to the question of enquiry and the need to dispense with enquiry under Section 5A of the Act. Though the notification, under Sections 4(1) and 6 of the Act are dated 17.2.1996 and 18.2.1996 respectively, initials of the Joint Collector and Collector were obtained on one and same day. So, prima facie, it is clear that the first respondent acted mechanically without applying his mind to the question whether there is real urgency, warranting dispensation of enquiry under Section 5A of the Act or not.

The Apex Court in ***UNION OF INDIA v s KRISHAN LAL ARNEJA AND OTHERS*** and ***UNION OF INDIA v s MUKESH HANS*** held that enquiry under Section 5A of the Act is a valuable right of the owner or person in possession of the land proposed to be acquired, and unless the authority competent to dispense with the enquiry exercises its mind independently to the facts of the case and orders dispensation, and if he takes the decision in a routine manner without applying the mind properly, the same is not a valid exercise of power. Since, the Collector does not seem to have exercised his mind to find out if there is real urgency or not, for dispensing with the enquiry under Section 5A of the Act, and since the procedure prescribed in G.O.Ms.No.456 dated 29.9.1995 seems to have also not been followed by authorities concerned, the notification is liable to be and hence is quashed.

Though petitioner filed W.P.No.2624 of 1996 for an identical relief, since he seems to have withdrawn the same after he filed this petition he need not be awarded costs.

Hence, the writ petition is allowed and the rule nisi is made absolute and the notification impugned is quashed. No costs.

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12.9.2005

mdaa.